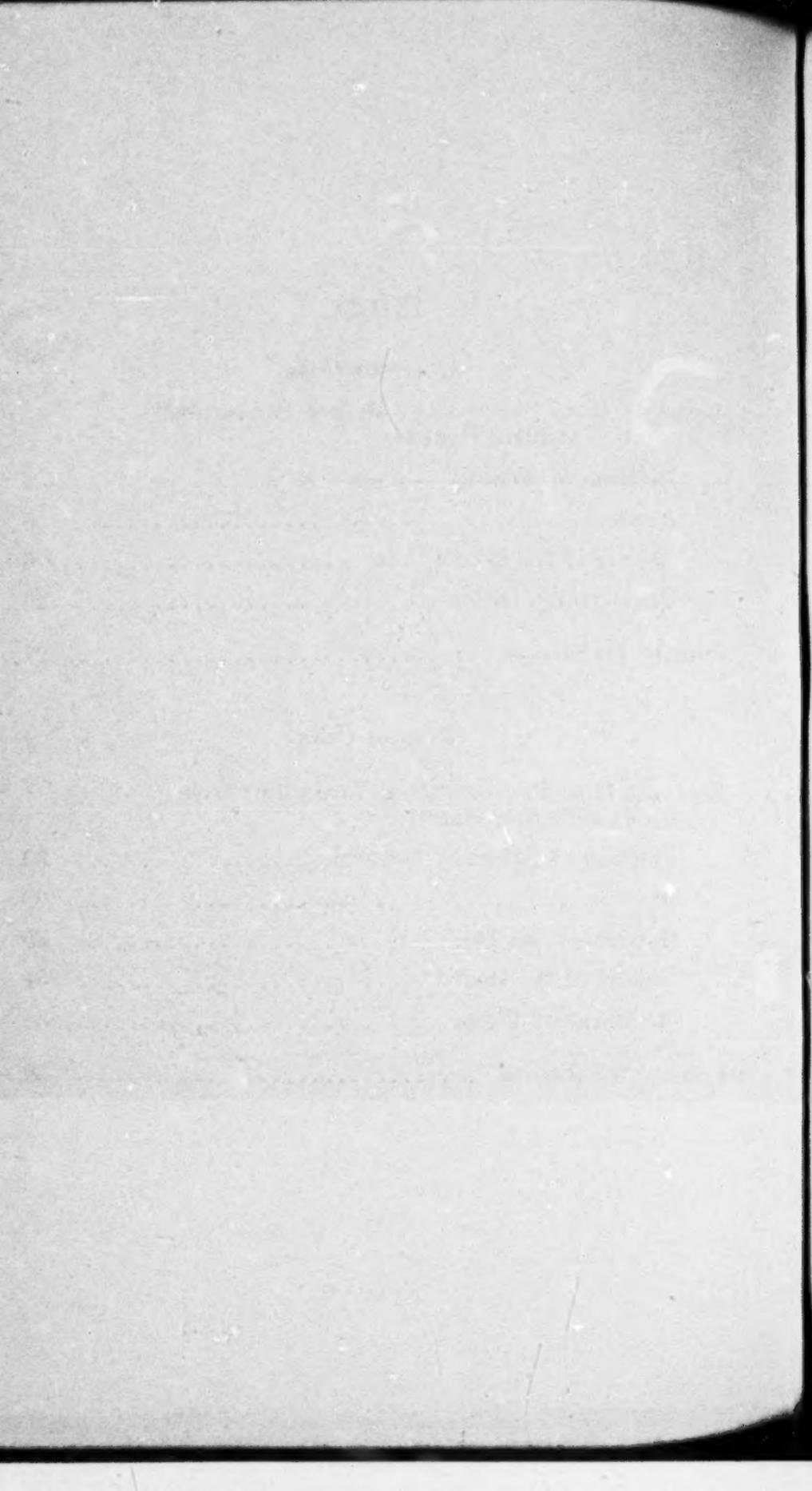


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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,492

WILLIAM ALBERTSON, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

No. 17,623

ROSCOE QUINCY PROCTOR, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

**On Review of Orders of the Subversive Activities
Control Board**

JOINT APPENDIX

IN THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-1-62

ROBERT F. KENNEDY, Attorney General of the United States,
Petitioner,

v.

WILLIAM ALBERTSON, *Respondent.*

On petition for an order to require William Albertson to register and to file a registration statement with the Attorney General as required by Section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended, pursuant to Section 13(a)

(Filed May 31, 1962)

The Attorney General respectfully represents to the Subversive Activities Control Board that there is in effect a final order of the Board requiring the Communist Party of the United States of America, hereinafter referred to as the Communist Party or the organization, to register under Section 7(a) of the Subversive Activities Control Act of 1950, as amended (hereinafter referred to as the Act) as a Communist-action organization; that such order became final on October 20, 1961; that pursuant to Section 13(k) of the Act such order was published in the Federal Register on October 21, 1961; that more than sixty days have elapsed since such order became final; that such organization has not registered with the Attorney General nor has it filed a registration statement under Section 7 of the Act as a Communist-action organization; and that no officer thereof has registered for and on behalf of such organization or filed a registration statement for and on behalf of such organization as required by Section 7(h) of the Act and by the Attorney General's Regulations, 28 C.F.R., Section 11.205.

The Attorney General further respectfully represents to the Board that the respondent, a natural person, was at

all times mentioned herein, and continues to be, a member of the Communist Party of the United States of America, a Communist-action organization, and as such was required under Section 8(a) and (c) of the Act to register and to file a registration statement with the Attorney General on or before December 20, 1961, and that respondent has failed to do so and continues to fail to do so.

In support of this petition, the Attorney General alleges the following facts, based upon information and belief, relating to the membership of respondent in the Communist Party, to wit:

I

During the months of January and February, 1962, and on divers occasions prior thereto, the respondent made statements disclosing that he was a member of and that he was a functionary of the Communist Party.

II

During the months of December, 1961, and January and February, 1962, and on divers occasions prior thereto, the respondent attended meetings of the Communist Party, the attendance at which was restricted to Communist Party members.

III

On or about December, 1959, the respondent was elected a member of the National Committee of the Communist Party, and from on or about January, 1960, to the date hereof has served as a member of the New York State Committee and the New York State Board of the Communist Party.

IV

During the months of January, and February, and April, 1962, the respondent discussed and imparted information regarding Communist Party policy and activities with members of the Communist Party.

WHEREFORE, your petitioner prays that the Board enter an order against the respondent requiring him to register and to file a registration statement with the Attorney General as a member of a Communist-action organization in the manner required by the Act.

Respectfully submitted,

ROBERT F. KENNEDY

Robert F. Kennedy

Attorney General

J. WALTER YEAGLEY

J. Walter Yeagley

Assistant Attorney General

ORAN H. WATERMAN

Oran H. Waterman

Attorney,

Department of Justice

JAMES A. CRONIN, JR.

James A. Cronin, Jr.

Attorney,

Department of Justice

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss:

ROBERT F. KENNEDY, being duly sworn, deposes and says, that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

ROBERT F. KENNEDY

Robert F. Kennedy

Sworn to before me this 31st day of May, 1962.

EVELYN G. DODD

Notary Public, D. C.

My Commission expires June 14, 1963.

Answer

(Filed June 25, 1962)

The respondent, answering the petition:

1. States that sections 8 and 13 of the Subversive Activities Control Act, on their face and as sought to be applied in this proceeding are unconstitutional in that they violate the Fifth Amendment privilege against self-incrimination, which respondent hereby asserts, and the First Amendment, and deny respondent due process of law and trial by jury as required by the Fifth and Sixth Amendments and Art. III, sec. 2, cl. 3, and constitute a bill of attainder.
2. States that the petition fails to allege facts warranting issuance of the order prayed for.
3. Denies the allegation that the Communist Party of the United States of America is a Communist-action organization.
4. In reliance upon the privilege against self-incrimination, refuses to answer the allegation that respondent was and continues to be a member of the Communist Party of the United States of America and the allegations of paragraphs I to IV, inclusive, of the petition.

WILLIAM ALBERTSON

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

WILLIAM ALBERTSON, being duly sworn, deposes and says that he is the respondent above named and has read the foregoing answer and knows the contents thereof and that the same is true to the best of respondent's knowledge and belief.

WILLIAM ALBERTSON

Subscribed and sworn to before me this 14th day of June, 1962.

BLANCH FREEDMAN
Notary Public

JOHN J. ABT
John J. Abt,
320 Broadway,
New York 7, N. Y.

JOSEPH FORER
Joseph Forer,
711 14th Street, N. W.
Washington 5, D. C.

Attorneys for Respondent.

Report of the Board

(Filed October 29, 1962)

PRELIMINARY STATEMENT

This is a proceeding on petition of the Attorney General, filed May 31, 1962, for an order of the Board requiring the respondent, William Albertson, to register and file a registration statement with the Attorney General as required of members of a Communist-action organization by section 8(a) and (c) of the Subversive Activities

Control Act of 1950, as amended.¹ Pertinent parts of the Act are set forth in Appendix "A" attached and made a part hereof.

The petition alleged that Albertson was at the time of the filing of the petition and at least since 1959 had been a member of the Communist Party of the United States of America;² that on October 20, 1961, an order of this Board became final requiring said Communist Party to register under section 7 of the Act as a Communist-action organization; and, that by reason of the failure of the Communist Party or any officer thereof to register and file a registration statement as prescribed in the Act, it became the duty of Albertson himself to register which he failed to do and continues to fail to do. In support of the petition, the Attorney General set forth, in paragraphs numbered "I" through "IV", allegations of facts relating to the membership of respondent in the Communist Party, including his making of statements disclosing such membership, his attendance at meetings restricted to members of the Party, his election to membership on the National Committee of the Party, his serving as a member of the New York State Committee and the New York State Board of the Party, and his discussions of Communist Party policy with other members of the Party.

Respondent, on June 25, 1962, filed an answer to the petition attacking the constitutionality of sections 8 and 13 of the Act; stating that the petition fails to allege facts warranting issuance of the order prayed for; denying the allegation that the Communist Party of the United States

¹ At the time of filing the instant petition, the Attorney General also filed similar petitions against nine other individuals. Each of the nine individuals was represented by the same counsel, attorneys John J. Abt and Joseph Forer, who represented the respondent in this proceeding. Virtually identical answers were filed by each respondent.

² For convenience the Communist Party of the United States of America will sometimes be referred to herein as "the Communist Party" or "the Party."

of America is a Communist-action organization; and relying upon the privilege against self-incrimination in refusing to answer the allegation that respondent was and continues to be a member of the Communist Party and the allegations of paragraphs I to IV, inclusive, of the petition.

Pursuant to Rule 201.7(a) revised, of the Board's Rules of Procedure, the reliance in respondent's answer to the petition upon the constitutional privilege against self-incrimination operates as a denial for purposes of the Board proceeding.

A consolidated prehearing conference in this and the similar cases (see footnote "1," *supra*) was held on July 2, 1962. Thereafter the Board, on July 6, 1962, entered an order acting upon matters raised at the prehearing conference. Counsel for respondent having requested and counsel for petitioner having agreed to a postponement of the original earlier hearing date, the hearing was rescheduled and began on September 11 and concluded on September 24, 1962, in Washington, D. C., before the undersigned members of the Board.

Counsel for petitioner presented the oral testimony of four witnesses and three exhibits (Attorney General Exhibits 1-3, inclusive). No witnesses were presented on behalf of respondent. One exhibit, a prior report of one of petitioner's witnesses, was offered by respondent and received in evidence (Albertson Exhibit 6).³ At the conclusion of the hearing closing argument was made by counsel for petitioner. (Tr. 290-302.) Counsel for respondent stated:

I think the record in this case speaks for itself, Mr. Chairman, and I see no occasion for me to elaborate my position at this time. (Tr. 302.)

³ Receipts for money paid to petitioner's witnesses by the Federal Bureau of Investigation were given exhibit numbers for purposes of identification but were not offered in evidence. As will appear, the witnesses were cross-examined in detail on money they received from the F.B.I.

Petitioner, on October 8, 1962, filed and served proposed findings of fact consisting of forty numbered paragraphs. Respondent's proposed findings of fact, filed on October 15, 1962, were as follows in proposing the conclusion that the petition should be denied:

1. The petitioner has offered no evidence in support of the allegation in the petition that the Communist Party of the United States is a Communist-action organization.
2. The evidence introduced by petitioner, even if fully credited, would not establish by a preponderance of the evidence that the respondent is a member of the Communist Party of the United States within the meaning of the term "member" in the Subversive Activities Control Act.

The proposed findings submitted by both sides have been considered in making findings and conclusions herein.⁴

The witnesses who gave oral testimony on behalf of petitioner as follows:

Mrs. Lulu Mae Thompson, a housewife of Lathrop, California (tr. 39-40, 80). She joined the Communist Party in June of 1953 and ceased membership on March 30, 1962 (tr. 40). While a member of the Communist Party she was treasurer of the Communist Party's Local 17 County Club of San Joaquin County, chairman of the Sacramento-San Joaquin Valley Section of the Party, member of the Party District Committee of Northern California, and a delegate to the 17th National Convention of the Party (tr. 40).

⁴ It was stipulated by counsel for both sides that following argument and the submission of proposed findings the Board would proceed to consider the record and issue an appropriate report and order without first issuing an initial or tentative decision. (See Order entered July 6, 1962, following prehearing conference.)

Allen R. Prince, a salesman of food products of Brooklyn, New York (tr. 99, 119). He joined the Communist Party in October 1959, and was a member at the time of this hearing (tr. 99). During his Communist Party membership he was financial treasurer of the Brooklyn Youth Club of the Party, and in November of 1960 became organizer of the Club; member of the Executive Board of the Club; member of the King's County Council of the Communist Party; and member of the Party's New York State Youth Committee or Commission (tr. 99-100).

Mrs. Ethel Newton, of New York City, the executive assistant of a private high school in New Jersey (tr. 155, 189). She was a member of the Communist Party from 1947 until late 1949 and then rejoined in 1955 and was a member at the time of this hearing (tr. 155, 189-190). While a member of the Party during the most recent period she was organizer of the Village Club 2 of the Party, coordinator of the Club, organizer of the Village Section of the Party, member of the New York County Communist Party Council, and member of the Committee and Coordinating Committee of the New York State Communist Party (tr. 156).

Albert Jackson, a refrigeration mechanic, of New York City (tr. 270-271). He first joined the Communist Party in Pittsburgh in 1945 (tr. 266). He was a member of the Party at the time of testifying in this hearing (tr. 231). For about eight months up to the time of testifying he has been chairman of the Eleventh A.D. Communist Party Club in New York City (tr. 231-232, 245-246). Other positions he has held in the Party were: Press Director of the Club, Education Director of the Club, representative of the Harlem Region of the Party to the New York State Party Committee (assigned in April of 1961), and member of the Harlem Regional Committee of the Party (tr. 232, 242).

Each of petitioner's four witnesses was a paid informant for the Federal Bureau of Investigation during his mem-

bership in the Communist Party, in the instances of Newton and Jackson during the latter period of their membership. While members of the Party and informants for the F.B.I. they reported to the F.B.I. on the activities of the Party, and received money from the F.B.I. for both services and expenses.⁵ Prince and Thompson also served as paid informants before becoming members of the Party. Full opportunity for cross-examination of these witnesses was afforded and pertinent copies of their prior reports to the F.B.I. were delivered to counsel for respondent for use in cross-examination. The cross-examination was directed mainly to items, such as money received from the F.B.I., going to possible interest of the witnesses. There was no rebuttal testimony of any of the testimony given by these witnesses and their testimony was mutually consistent and corroborative. By way of closing argument counsel for respondent elected to stand on the record (*supra*). His proposed findings did not raise specific matters going to the credibility of any of these witnesses. The Board, having observed the witnesses and considered the entire record, credits the witnesses.

Production of Reports of Petitioner's Witnesses

At the conclusion of the direct examination of each of the four witnesses presented by petitioner, there were delivered directly to counsel for respondent by counsel for petitioner the receipts that the witness had signed for money received from the F.B.I., and the prior written reports made by the witness to the F.B.I. which counsel for petitioner considered to be statements within the purview

⁵ Generally, the amount received from the F.B.I. increased with the time that a particular witness was in the Party and furnishing more information. For instance, the witness Lulu Mae Thompson received around \$25.00 a month when she first started reporting and this was increased to \$75.00, then to \$100.00 and ultimately to \$225.00 (Tr. 81-96.) The witness Albert Jackson received about \$1600.00 for the first seven months in the year 1962. (Tr. 271.) The husband of the witness Thompson and the wife of the witness Prince were also paid informants for the F.B.I. (E.g., tr. 90; 137-138.)

of Title 18 U.S.C. § 3500.⁶ At the same time there were delivered to the Board for *in camera* examination other documents representing information furnished to the F.B.I. by the witness. These documents were in two categories: (a) reports prepared by the witness, which counsel conceded to be statements but considered not to contain any material which related to the subject matter of the witness' testimony, and (b) reports prepared by agents of the F.B.I. following oral interviews with the witnesses, which counsel considered not to contain related matter and also not to be statements within 18 U.S.C. 3500. (See tr. 70-73; 111-113; 184-186; 250-252.)

These documents, numbering in excess of fifteen hundred, were examined by the Board *in camera*. Certain of them were determined to contain related material, and from these excisions of unrelated portions were requested by counsel for petitioner in a few instances and were considered and granted by the Board. The documents were then delivered to counsel for respondent who, after reviewing them, did not desire further cross-examination of the witnesses involved (tr. 152; 284).⁷ With respect to the category of documents in the form of memoranda prepared by agents of the F.B.I. on oral information furnished by the witnesses, it was unnecessary in any instance to determine whether the agents' memoranda qualified as statements of the witnesses under 18 U.S.C. 3500. In all but three instances this category of documents did not contain any material that related to the subject matter of the witnesses' testimony. In the instances of the documents that did contain related material, the question whether they were "statements" was waived by counsel for petitioner (tr. 152, 284-285).

⁶ Lists of reports that were turned over directly to counsel for respondent appear at transcript pages 275 to 281, inclusive.

⁷ The additional documents that were delivered to counsel for respondent were: three reports of the witness Thompson; one report of the witness Prince; and three reports of the witness Newton.

In each instance, counsel for respondent noted for the record objections to the Board determination that the documents not produced were not relevant, to the determination that certain of the reports were not statements without taking extrinsic evidence, and to the excision of any material from those documents that were produced (tr. 153; 285). The objections were overruled and the documents were made Board exhibits, sealed, as follows: the Thompson documents, Board Exhibit 1; The Prince documents, Board Exhibit 2; the Newton documents, Board Exhibit 3; and the Jackson documents, Board Exhibit 4 (tr. 153-154; 285).

THE ISSUES

The primary issue in this proceeding is, as stated by counsel in their opening statements, whether the respondent, William Albertson, is (or at the times mentioned in the petition, was) a member of the Communist Party of the United States of America. (See, tr. 35-36.) Another issue, raised by counsel for respondent, is whether the Communist Party of the United States is a Communist-action organization. (See tr. 38-39 and Respondent's Proposed Finding No. 1.) We will treat first with the latter.

Counsel for petitioner, at the outset of the hearing, requested the Board to take official notice for the purposes of this proceeding of an order which the Board entered and of subsequent proceedings in the matter of the Communist Party of the United States of America (tr. 33-34). Counsel for respondent objected to such official notice. The grounds were that William Albertson, respondent herein, was not a party to the proceedings involving the Communist Party and was not, and cannot be bound by those proceedings and hence they are not competent with respect to him here (tr. 39).

The clear intent of the Act is that once an order of this Board has become "final" requiring an organization to register as a Communist-action organization, the issue

whether the organization is of such type is not to be relitigated in subsequent proceedings for the registration of a member of the organization. The Act provides for the registration of any member of an organization concerning which "there is in effect a final order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization." (Section 8(a).) Thus an "issue" in a proceeding for the registration of an individual member is whether there is in effect a final order requiring the registration of the organization to which the individual is alleged to belong.⁸ Counsel for respondent did not, and could not dispute the fact that there is in effect a final order of the Board requiring the Communist Party, U.S.A., to register as a Communist-action organization. (See the facts set forth below under the subheading "Official Notice.")

It would be a plainly unreasonable application of the Act to require that in a proceeding involving an individual, if shown to be a member of the Party and thus fairly represented in the Party proceeding, the status of the Party must nonetheless be relitigated.⁹ To do so would frustrate the purpose of the Act to obtain disclosure of the members of a communist-action organization.

FINDINGS OF FACT

1. *Official Notice*

For the reasons indicated above, respondent's objection to the taking of official notice was overruled and the parties were notified that official notice would be taken of the following which are hereby deemed to be facts for the

⁸ The Act provides full opportunity for an organization that has been determined to be a Communist-action organization to obtain subsequent relief from the registration requirements by proper showing that it is not then a Communist-action organization. Sections 13(b) and (i)(1).

⁹ The Board, in the proceeding involving the Communist Party, on the basis of a record comprising over 14,000 pages of oral testimony and hundreds of exhibits, in which the Party was represented by competent counsel, determined the Party to be a Communist-action organization as defined in the Act.

purposes of this proceeding. (See tr. 148-151.) No evidence was offered by respondent to rebut these facts.

1. The Subversive Activities Control Board on April 20, 1953, entered an order requiring the Communist Party of the United States of America to register as a Communist-action organization under section 7 of the Subversive Activities Control Act of 1950;

2. The United States Court of Appeals for the District of Columbia Circuit on July 30, 1959, entered its judgment in Communist Party of the United States of America v. Subversive Activities Control Board, which affirmed the order of the Board requiring the Communist Party of the United States of America to register as a Communist-action organization;

3. The Supreme Court of the United States on October 10, 1961, entered its mandate which affirmed the judgment of the United States Court of Appeals for the District of Columbia Circuit, which judgment had been entered by the said United States Court of Appeals on July 30, 1959, in Communist Party of the United States vs. Subversive Activities Control Board;

4. More than ten (10) days have elapsed since the Supreme Court entered its mandate on October 10, 1961, in Communist Party of the United States of America v. Subversive Activities Control Board No. 12, October Term, 1960;

5. There was published in the Federal Register for October 21, 1961, Volume 26, No. 204, at page 9923, a notice by the Subversive Activities Control Board of the fact that the order of the Board requiring the Communist Party of the United States of America to register as a Communist-action organization under section 7 of the Subversive Activities Control Act of 1950 became final on the 20th day of October 1961; and

6. More than sixty (60) days have elapsed since October 20, 1961.

It was stipulated by counsel and the Board finds: that the Communist Party of the United States of America has not registered with the Attorney General nor filed a registration statement pursuant to section 7 of the Act; that no officer of the Communist Party nor any authorized representative of the Party has registered for and on behalf of the organization pursuant to section 7(h) of the Act; and, that the respondent, William Albertson, has not registered or filed a registration statement with the Attorney General pursuant to section 8(a) and (c) of the Act. (Tr. 34-35.)

2. Evidence of Party membership of Respondent

Petitioner's witnesses Prince, Newton and Jackson identified the respondent, William Albertson, by pointing him out as present in the hearing room, seated at counsel table (tr. 100-101; 156-157, 232). Each of these witnesses testified to meetings of specific, constituent, organizational parts of the Communist Party of the United States of America which the witness attended and at which Albertson was among those present and participated. Albertson did not take the stand to deny or explain his presence at and participation in these meetings and no witnesses were presented by respondent to rebut or contradict the testimony given by petitioner's witnesses. Findings based upon the testimony of these witnesses will now be made.

a. Testimony of Ethel Newton

The witness Ethel Newton testified to specific Communist Party activities of Albertson during the period of years from December 1959 to July 1962 (tr. 156-183.)

Albertson was present at the National Convention of the Communist Party of the United States of America which was held in December 1959 in New York City (tr. 156). At the National Convention, Albertson gave a report on youth in which he stated that shortly following the convention

the National Committee would appoint a Youth Commission (tr. 157-158). No other National Conventions of the Communist Party, U.S.A., have taken place since the one in December 1959 (tr. 162).¹⁰

Albertson was present at the reconvened New York State Convention of the Communist Party held in January 1960 in New York City (tr. 162, 166). Nominations for members of the New York State Committee of the party were read by Ben Davis who stated that he had been elected National Secretary of the Party at the National Convention (tr. 167). Albertson made a statement in relation to the nomination of two youth members to the effect that under the Constitution of the Communist Party they were not eligible for election since they had not been in the Party long enough (tr. 169). Albertson was among those nominated for membership on the New York State Committee of the Party (tr. 168). The witness left the State convention before the elections and before the election results were announced (tr. 221). At a subsequent general membership meeting of the New York State organization of the Communist Party, also held in January 1960, the county organizer announced that Albertson was the Organizational Secretary of the New York State Communist Party (tr. 171-172).¹¹

In July 1961 Albertson was present at an enlarged meeting of the New York State Committee of the Communist Party (tr. 173-174).

At a meeting in November 1961 of the New York County Communist Party Council, held in New York City, Albert-

¹⁰ Other occurrences at the convention involving Albertson to which the witness Newton testified were also a subject of the testimony of the witness Thompson and findings thereon will be made in considering Thompson's testimony, *infra*.

¹¹ Albertson was not present at the general membership meeting (tr. 224-225). Respondent's motion to strike the testimony with reference to the announcement was denied with the understanding that the evidence would be considered only for the purpose of showing that Albertson was considered by the Party people to be a member of the Party (tr. 226).

son was among those present and gave a report on conditions confronting the Party under the McCarran Act (tr. 175-176). Albertson also announced that the meeting would be the last meeting of the New York County Council of the Party (tr. 176). Another speaker announced that Albertson would be relieved of his responsibilities in the Brooklyn organization of the Party in order to become coordinator of the New York County Coordinating Committee, which would take the place of the New York County Council, and that Albertson would be attached to the State Committee of the Party and be a full-time worker there (tr. 177).

A few days after this meeting Albertson met with the witness Newton at her home to discuss organizational matters in the Village area of the Party (tr. 178). This was in Albertson's capacity as New York Communist Party Coordinator (tr. 177). Later in the month of November 1961 a meeting of the New York County Coordinating Committee of the Communist Party, U.S.A., was held at the home of the witness Newton (tr. 178-179). Albertson was present, acting as coordinator for the New York County of the Party, and stated that the Coordinating Committee would replace the old County Council, and that similar Coordinating Committees were being set up in all of the boroughs (tr. 179).

In January 1962 the witness Newton attended a meeting of the coordinators of all of the Communist Party clubs in New York County (tr. 179). Albertson, who was present, stated that the meeting was the first of a series of such meetings that would be called as there were problems to be discussed (tr. 180). The witness Newton was present at meetings of the New York County Communist Party Coordinating Committee in February, April, May and July of 1962, at which Albertson was present. At meetings in February he delivered the main report or brought announcements to the meetings (tr. 180-183). The meeting in May 1962 was at Newton's home as was the meeting

in July (tr. 182, 183). At the May meeting Albertson read a report recommending organizational changes involving the merger of certain areas (tr. 182). About ten days or two weeks after this (May) meeting, there was a meeting of all of the coordinators of all of the Party clubs in two of the areas which Albertson had said were to be merged (tr. 182-183). Albertson outlined the proposed changes and plans for a new Coordinator for the new area (tr. 183). He said there was no need for a vote because this was an organizational change (tr. 183).

During the months of January, February and April of 1962, Albertson was the Coordinator of the New York County Coordinating Committee of the Communist Party, U.S.A., to the knowledge of the witness Newton (tr. 182).

b. Testimony of Albert Jackson

As a representative from the Harlem Region of the Party, the witness Jackson attended meetings during the period from April to September 1961 of the New York State Communist Party Committee (tr. 232-233). At a meeting in June 1961 Albertson was present and participated in the discussion and postponement of a report that was to have been given by the Harlem Region (tr. 233-234). At the meeting in July 1961 Albertson gave a report on the expulsion of a named individual, stating that factional groups or persons who disagree with the leadership or the policy of the leadership will not be tolerated and will be removed, that unity of the Party was a must (tr. 235-236). At the meeting in August 1961, at which Albertson was present, action was taken by the Committee to remove certain members from their positions because they were part of a factional group but they were allowed to stay on the Committee (tr. 239-240).¹²

¹² On cross-examination it was developed that anyone present at the State Committee meetings could take part in discussions but only members of the Committee could vote (tr. 265-266). The record is not clear as to whether Albertson actually voted.

Jackson testified to two meetings of the Harlem Regional Committee of the Party at which Albertson was present, one in December 1961, and the other in January 1962 (tr. 242-245). At the December meeting Albertson stated that the Party will not tolerate any factional groups, that the life of the Party was at stake and there is no room in the Party for anyone who disagrees with the decisions that are made by the leadership (tr. 243-244). At the January (1962) meeting Albertson criticized the approach taken by one of the "comrades" toward The Worker (tr. 244-245).¹³

Albertson was present and participated in meetings of the Party Club Chairmen, Harlem area, in January 1962, March 1962, April 1962, and May 1962 (tr. 246-249). At the January meeting Albertson read a report on political activity, unity of the Party, and the need to put more effort in a campaign to raise funds for The Worker (tr. 246-247). At the March meeting Albertson gave a report on the need for the "comrades" to get into mass organizations, preferably political organizations (tr. 247-248). Albertson made proposals at the April meeting of activities to be undertaken designed to serve the cause of the Party by recruiting members while at the same time minimizing attack from right-wing elements (tr. 248). At the May (1962) meeting Albertson reported on the proposed merger of the Washington Heights group and the Harlem group, and he gave the name of the coordinator between leadership and the merged area (tr. 248-249).¹⁴

In August 1961 the witness Jackson attended a meeting of the Communist Party New York State Board at which Albertson was present and participated in the discussion

¹³ The term "comrade" is used between members of the Communist Party as meaning a member of the organization (tr. 250).

¹⁴ Albertson also discussed this merger at a meeting in the same month of the New York Coordinating Committee (testimony of the witness Newton, *supra*).

(tr. 240-241). The discussion included statements that all club chairmen should go back to their clubs and try to initiate action within mass organizations in support of a third, permanent, political party, the Freedom Party (tr. 240-241).

The witness Jackson had dinner with Albertson in May 1962, at which time Albertson stressed the need for Jackson's Party club to take the initiative in election work in the area since Jackson's club was the central club in Harlem and all work should be geared around it (tr. 249-250). Albertson also told Jackson that he (Albertson) was thinking that Jackson would replace the assistant coordinator between the area and the Party leadership (tr. 250).

c. Testimony of Allen Prince

In early July 1962 the witness Prince attended a Communist Party class at which Albertson lectured on the role of the Communist Party (tr. 110). About a week before the classes, Prince had attended a meeting, at which Albertson was present, of the Communist Party New York District Youth Coordinators (tr. 111).

During the year 1961 the witness Prince attended meetings of the New York State Communist Party Youth Commission (tr. 100). The highest position on the Commission was that of Chairman-coordinator (tr. 100). The position was held in 1961 by Albertson (tr. 100-101). The witness Prince first learned this at a meeting of the Commission when Albertson announced that he would be Chairman-Coordinator of the Commission and that he had been elected Secretary of the New York State Youth Commission of the Communist Party (tr. 101).

In November 1961 there was a reorganization and the Communist Party Youth Coordinators Committee, New York District, was formed in the place of the Youth Com-

mission (tr. 105).¹⁵ The witness Prince attended one meeting of the Coordinators Committee after it was formed; this meeting was held a few weeks following the formation, in late November 1961 (tr. 105-106). Albertson was present and gave the main report on the provisions of the McCarran Act (tr. 106).

Prince, in the preceding month (October 1961) had attended another meeting at which the McCarran Act was the subject of discussion (tr. 106). This was a meeting of the King's County Council of the Communist Party (tr. 107). Albertson stated at the meeting that if the members were arrested they should take the Fifth Amendment, not the First Amendment, and that if they were to receive the registration forms they were to be returned unanswered since the Communist Party had no intention of surrendering the list of its members or any records (tr. 106-107).

Prince was present at an earlier meeting of the King's County Council of the Communist Party that took place in August 1961 (tr. 107-109). At this meeting it was announced that Albertson would serve as chairman of the Administrative Committee of the King's County Council of the Party (tr. 109). Albertson held this position until October 1961 when, at a meeting of the Council at which Albertson was present the chairman of the New York State Communist Party requested that Albertson be released for reassignment (tr. 108-110).

d. Testimony of Lulu Mae Thompson and Ethel Newton
(17th Convention of the Party)

The witness Thompson was a delegate from her Communist Party organization in California to the 17th National

¹⁵ The reorganization was discussed and approved at a Communist Party Youth caucus at which Albertson presided (tr. 102-105). Attendance was not restricted to members of the Communist Party (tr. 228-229; Albertson Exhibit 6).

Convention of the Communist Party that was held in December 1959 in New York City (tr. 40-41). The witness Newton also attended this convention (*supra*). Newton observed the presence of Albertson and heard him read a report (*supra*). The convention adopted certain changes in the Constitution of the Communist Party, U.S.A. (Thompson, tr. 46-47, 282; Newton, tr. 158-159). Under the Constitution, as amended, only members of the Party who had been in good standing for at least five years were eligible for election to the National Committee, and to be eligible for election as a state officer or member of the state committee a member had to be in good standing for at least two years (A.G. Ex. 1, pp. 15 and 10, and A.G. Ex. 2).

At the National Convention, Albertson was one of the people nominated for membership on the National Committee of the Party (Newton, tr. 159-161). Albertson did not decline the nomination or withdraw his name (Newton, tr. 161). Newton testified that on the last day of the convention the election of the National Committee took place (tr. 161). She left the convention before the results were announced (tr. 187-188).¹⁶ At subsequent Party meetings which she attended official reports were made on the events and highlights of the National Convention (tr. 167, 169-171).

The witness Thompson was present at the session of the convention when the results of the election were reported by the elections committee (tr. 59-60). She made notes of the names of the people whom the election committee reported as having been elected and from them prepared a report to the F.B.I. and then the notes were destroyed (tr. 60-69). Thompson stated that at the time she made her report it accurately reflected the results as read by

¹⁶ Since Newton was not present at the National Convention when the elections occurred she does not know whether Albertson was present at that time (tr. 187-188).

the elections committee (tr. 63-64). Thompson had no independent recollection of hearing the name Albertson read by the elections committee and her report did not refresh her recollection (tr. 62-63). Over objection portions of her report to the F.B.I. were made a part of the record (tr. 66-69). This portion of Thompson's report listed Albertson among those elected to the National Committee of the Communist Party (tr. 65).

CONCLUSIONS

Taking all the facts together and considered as a whole it is clear that during the period covered by the petition the respondent, William Albertson, by what he has done and said, had the desire and intent to be a member of the Communist Party of the United States of America, and there has been meaningful recognition by the Party that it considers him as a member.

Albertson was nominated and elected a member of the National Committee of the Party at the Party National Convention in December 1959. There have been no national conventions held since his election. During 1961 and the first six months of 1962, immediately preceding the hearing herein, Albertson held important positions of leadership in the Party. Among these were: the highest position of the New York State Communist Party Youth Commission; Chairman of the Administrative Committee of the King's County organization of the Communist Party; and Coordinator of the New York County Communist Party.

There were numerous instances of meetings of Communist Party clubs and area organizations which Albertson attended and at which he took an active leadership part, reporting on matters of Communist Party policy and giving instructions from the Party leadership as to programs and activities to be undertaken by the club chairmen and members. Albertson showed a familiarity with the provisions of the Constitution of the Communist Party, and, in May 1962 was an instructor at a Communist Party class

where the subject of his instruction was the role of the Communist Party.

Albertson was shown to have conferred on various occasions with other persons holding leadership positions in the Communist Party with respect to the Party's plans. He has stressed to Party clubs the necessity for maintaining unity within the Party and the need to eliminate all factional groups or individuals.

Petitioner's evidence stands uncontroverted. It is impressive and persuasive that respondent, William Albertson, was at the time of the hearing, and since at least the year 1960 has been, a member of the Communist Party of the United States of America. The Board so finds by the preponderance of the evidence. There is in effect, and has been since October 20, 1961, a final order of the Subversive Activities Control Board requiring the Communist Party, U.S.A., to register under the Subversive Activities Control Act as a Communist-action organization.

The respondent, William Albertson, who has not registered under Section 8 of the Subversive Activities Control Act is in fact required to register under such section. An appropriate order accompanies this Report of the Board.

By the Board:

/s/ FRANCIS A. CHERRY, Member
Francis A. Cherry

/s/ THOMAS J. DONEGAN, Member
Thomas J. Donegan

/s/ JAMES R. DUNCAN, Member
James R. Duncan

/s/ EDWARD C. SWEENEY, Member
Edward C. Sweeney

, Vacancy

October 29, 1962
Washington, D. C.

Registration Order

(Filed October 29, 1962)

The Board, after appropriate hearing, having this day issued a report in writing in which it states its findings as to the facts and its conclusion that the respondent, William Albertson, is required to register under the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization as defined in the Act, it is

ORDERED, that the respondent, William Albertson, shall register under and pursuant to section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization, and it is

FURTHER ORDERED that a copy of this REGISTRATION ORDER be served upon the respondent, William Albertson.

By the Board:

/s/ FRANCIS A. CHERRY, Member
Francis A. Cherry

/s/ THOMAS J. DONEGAN, Member
Thomas J. Donegan

/s/ JAMES R. DUNCAN, Member
James R. Duncan

/s/ EDWARD C. SWEENEY, Member
Edward C. Sweeney

, Vacancy

October 29, 1962
Washington, D. C.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,492

WILLIAM ALBERTSON, *Petitioner*,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent*

Petition for Review

(Filed Dec. 26, 1962)

William Albertson, by his attorneys, petitions the Court to review and set aside the order of the Subversive Activities Control Board (hereafter called the Board) issued October 29, 1962, in the proceeding before the Board entitled Robert F. Kennedy, Attorney General of the United States, Petitioner v. William Albertson, Respondent, Docket No. I-1-62.

NATURE OF THE PROCEEDINGS

The order involved herein was issued under section 13(g)(2) of the Subversive Activities Control Act of 1950 (hereafter called the Act), 50 U.S. Code § 792(g)(2). It requires the petitioner herein to register under section 8(a) and (c) of the Act, 50 U.S. Code § 787(a) and (c), "as a member of the Communist Party of the United States of America, a Communist-action organization." The order was issued after proceedings before the Board initiated under section 13(a) of the Act, 50 U.S. Code § 792(a), by a petition of the Attorney General alleging that the petitioner was a member of the Communist Party of the United States of America and that neither he nor that organization had registered under the Act.

JURISDICTION AND VENUE

Jurisdiction and venue exist in this Court by virtue of section 14(a) of the Act, 50 U.S. Code § 793(a), which so far as is pertinent provides:

“The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, . . . may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside.”

GROUNDS FOR RELIEF

1. Sections 8 and 13 of the Act, on their face and as applied, are unconstitutional. They violate the Fifth Amendment privilege against self-incrimination, which petitioner hereby asserts, and the First Amendment, and deny petitioner due process of law and trial by jury, as required by the Fifth and Sixth Amendments and Art. III, § 2, cl. 3, and constitute a bill of attainder.
2. The findings and order of the Board are based on erroneous constructions of the Act.
3. The findings and order of the Board are not supported by a preponderance of the evidence.
4. The findings and order of the Board are based on irrelevant evidence.
5. The Report of the Board fails to define adequately the grounds and reasoning of the order.
6. The Board erred in holding that petitioner was bound by the Board's prior determination that the Communist Party was a Communist-action organization.

RELIEF PRAYED

Wherefore, petitioner prays that the Court set aside the aforesaid order of the Board.

Respectfully submitted,

s/ JOHN J. ABT
John J. Abt
320 Broadway
New York 7, N. Y.

s/ JOSEPH FORER
Joseph Forer
711 14th St., N. W.
Washington 5, D. C.

Attorneys for Petitioner

IN THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-10-62

ROBERT F. KENNEDY, Attorney General of the United States,
Petitioner,

v.

ROSCOE QUINCY PROCTOR, *Respondent.*

On Petition for an Order to Require Roscoe Quincy Proctor to Register and to File a Registration Statement With the Attorney General as Required by Section 8(a) and (c) of the Subversive Activities Control Act of 1950, as Amended, Pursuant to Section 13(a)

(Filed May 31, 1962)

The Attorney General respectfully represents to the Subversive Activities Control Board that there is in effect a final order of the Board requiring the Communist Party of the United States of America, hereinafter referred to as the Communist Party or the organization, to register under Section 7(a) of the Subversive Activities Control Act of 1950, as amended (hereinafter referred to as the Act) as a Communist-action organization; that such order became final on October 20, 1961; that pursuant to Section 13(k) of the Act such order was published in the Federal Register on October 21, 1961; that more than sixty days have elapsed since such order became final; that such organization has not registered with the Attorney General nor has it filed a registration statement under Section 7 of the Act as a Communist-action organization; and that no officer thereof has registered for and on behalf of such organization or filed a registration statement for and on behalf of such organization as required by Section 7(h) of the Act and by the Attorney General's Regulations, 28 C.F.R., Section 11.205.

The Attorney General further respectfully represents to the Board that the respondent, a natural person, was at all times mentioned herein and continues to be, a member

of the Communist Party of the United States of Ameria, a Communist-action organization, and as such was required under Section 8(a) and (c) of the Act to register and to file a registration statement with the Attorney General on or before December 20, 1961, and that respondent has failed to do so and continues to fail to do so.

In support of this petition, the Attorney General alleges the following facts, based upon information and belief, relating to the membership of respondent in the Communist Party, to wit:

I

During the months of January, February, and March, 1962, and on divers occasions prior thereto, the respondent attended meetings of the Communist Party, the attendance at which was restricted to Communist Party members.

II

At the last National Convention of the Communist Party, in December, 1959, the respondent was elected a member of the National Committee of the Communist Party. In March, 1962, and in the two year period immediately prior thereto, he served as a member of the District Committee of the Northern District of California.

III

During the months of January, February, and March, 1962, and on divers occasions prior thereto, the respondent discussed and imparted information regarding Communist Party policies and activities with members of the organization.

IV

During the months of January, February, and April, 1962, and on divers occasions prior thereto, the respondent was called upon for service in behalf of the Communist Party by members and officers of the organization.

WHEREFORE, your petitioner prays that the Board enter an order against the respondent requiring him to register and to file a registration statement with the Attorney General as a member of a Communist-action organization in the manner required by the Act.

Respectfully submitted,

ROBERT F. KENNEDY

Robert F. Kennedy

Attorney General

J. WALTER YEAGLEY

J. Walter Yeagley

Assistant Attorney General

ORAN H. WATERMAN

Oran H. Waterman

Attorney,

Department of Justice

THOMAS E. MARUM

Thomas E. Marum

Attorney,

Department of Justice

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss:

ROBERT F. KENNEDY, being duly sworn, deposes and says, that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

ROBERT F. KENNEDY
Robert F. Kennedy

Sworn to before me this
31st day of May, 1962

EVELYN G. DODD
Notary Public, D. C.

My Commission expires June 14, 1963.

Answer

(Filed June 25, 1962)

The respondent, answering the petition:

1. States that sections 8 and 13 of the Subversive Activities Control Act, on their face and as sought to be applied in this proceeding are unconstitutional in that they violate the Fifth Amendment privilege against self-incrimination, which respondent hereby asserts, and the First Amendment, and deny respondent due process of law and trial by jury as required by the Fifth and Sixth Amendments and Art. III, sec. 2, cl. 3, and constitute a bill of attainder.
2. States that the petition fails to allege facts warranting issuance of the order prayed for.
3. Denies the allegation that the Communist Party of the United States of America is a Communist-action organization.

4. In reliance upon the privilege against self-incrimination, refuses to answer the allegation that respondent was and continue to be a member of the Communist Party of the United States of America and the allegations of paragraphs I to IV, inclusive, of the petition.

ROSCOE QUINCY PROCTOR

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } ss:

Roscoe Quincy Proctor, being duly sworn, deposes and says that he is the respondent above named and has read the foregoing answer and knows the contents thereof and that the same is true to the best of respondent's knowledge and belief.

ROSCOE QUINCY PROCTOR

Subscribed and sworn to before me this 19th day of June, 1962.

THEODORE R. HARDEMAN
Theodore R. Hardeman
Notary Public

JOHN J. ABT
John J. Abt,
320 Broadway,
New York 7, N. Y.

JOSEPH FORER
Joseph Forer,
711 14th Street, N. W.
Washington 5, D.C.

Attorneys for Respondent.

Recommended Decision

(Filed Dec. 31, 1962)

PRELIMINARY STATEMENT

This is a proceeding on petition of the Attorney General, filed May 31, 1962, for an order of the Board requiring the respondent, Roscoe Quincy Proctor, to register and file a registration statement with the Attorney General as required of members of a Communist-action organization by section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended.¹ Pertinent parts of the Act are set forth in Appendix "A" attached and made a part hereof.

The petition alleged that Proctor was at the time of filing of the petition and at least since 1959 had been a member of the Communist Party of the United States of America;² that on October 20, 1961, an order of this Board became final requiring said Communist Party to register under section 7 of the Act as a Communist-action organization; and, that by reason of the failure of the Communist Party or any officer thereof to register and file a registration statement as prescribed in the Act, it became the duty of Proctor himself to register which he failed to do and continues to fail to do. In support of the petition, the Attorney General set forth, in paragraphs numbered "I" through "IV", allegations of facts relating to the membership of respondent in the Communist Party, includ-

¹ At the time of filing the instant petition, the Attorney General also filed similar petitions against nine other individuals. Each of the nine individuals was represented by the same counsel, attorneys John J. Abt and Joseph Forer, who represented the respondent in this proceeding. Virtually identical answers were filed by each respondent. Ann Fagan Ginger and Richard Bancroft also entered their appearances on behalf of the instant respondent at the hearing of evidence herein (tr. 32).

² For convenience the Communist Party of the United States of America will sometimes be referred to herein as "the Communist Party" or "the Party."

ing his attendance at meetings restricted to members of the Party, his election to membership on the National Committee of the Party, his serving as a member of the District Committee of the Northern District of California of the Communist Party, his discussions of Communist Party policy with other members of the Party, and his being called upon for service in behalf of the Communist Party.

Respondent, on June 25, 1962, filed an answer to the petition attacking the constitutionality of sections 8 and 13 of the Act; stating that the petition fails to allege facts warranting issuance of the order prayed for; denying the allegation that the Communist Party of the United States of America is a Communist-action organization; and relying upon the privilege against self-incrimination in refusing to answer the allegation that respondent was and continues to be a member of the Communist Party and the allegations of paragraph I to IV, inclusive, of the petition.

Pursuant to Rule 201.7(a) revised, of the Board's Rules of Procedure, the reliance in respondent's answer to the petition upon the constitutional privilege against self-incrimination operates as a denial for purposes of the Board proceeding.

A consolidated prehearing conference was held by the Board on July 2, 1962, in six other similar cases. Two of the attorneys for the present respondent also served as counsel for the respondents in the other cases. At the conference, counsel for respondent requested that the hearing herein not begin until a later date, and that it be held in California (tr. 25-29; Order of the Board dated September 28, 1962). Counsel for petitioner had no objections (tr. 27-28). It was agreed that there was no need for a prehearing conference in this proceeding since the principal areas had been covered in the aforesaid conference (tr. 28-29). Accordingly, the transcript of the prehearing conference of July 2, 1962, will be made a part of the record in this

proceeding, constituting transcript pages 1 through 30. The hearing herein was held on November 19, 1962, in San Francisco, California, before the undersigned Member of the Board.

Counsel for petitioner presented the oral testimony of two witnesses and two exhibits (Attorney General's Exhibits 1 and 2). No witnesses were presented on behalf of respondent, nor were any exhibits identified or offered (tr. 107). Counsel for petitioner made a brief closing argument (tr. 107-108). Counsel for respondent made no closing argument stating that the record speaks for itself (tr. 108).

Petitioner, on November 26, 1962, filed and served proposed findings of fact consisting of forty-two numbered paragraphs. Respondent's proposed findings of fact, filed on December 3, 1962, were as follows in proposing the conclusion that the petition should be denied:

1. The petitioner has offered no evidence in support of the allegation in the petition that the Communist party of the United States is a Communist-action organization.
2. The evidence introduced by petitioner, even if fully credited, would not establish by a preponderance of the evidence that the respondent is a member of the Communist Party of the United States within the meaning of the term "member" in the Subversive Activities Control Act.

The proposed findings submitted by both sides have been considered in making findings and conclusions herein.

The witnesses who gave oral testimony on behalf of petitioner were as follows:

Mrs. Lulu Mae Thompson, a housewife of Lathrop, California, joined the Communist Party in June of 1953 and ceased membership on March 30, 1962 (tr. 46, 70-71, 77).

While a member of the Communist Party she was secretary-treasurer of the Communist Party's San Joaquin County Club, chairman of the Sacramento-San Joaquin Valley Section of the Party, member of the Party District Committee of Northern California, and a delegate to the 17th National Convention of the Party (tr. 46). During her membership in the Communist Party, Mrs. Thompson reported its activities to the Federal Bureau of Investigation (tr. 46).

Howard Thompson, of Lathrop, California, and husband of Lulu Mae Thompson, joined the Communist Party in March 1948, was suspended from membership from May 1951 to October 1952 and ceased attending Party meetings in March 1962 (tr. 65, 80, 93-96, 106). While a member of the Communist Party, he was elected a delegate to the Sacramento-San Joaquin Valley Section in 1957 (tr. 81). In 1958 he was elected chairman of the San Joaquin County Club, and was later elected a delegate to the Agricultural Workers Commission of the Party (tr. 81). During his membership in the Party, he reported its activities to the Federal Bureau of Investigation (tr. 80-81).

Petitioner's witnesses Lulu Mae Thompson and her husband, Howard Thompson, were paid informants for the Federal Bureau of Investigation during and after their respective membership in the Communist Party. (E.g. tr. 46, 64, 77-78, 80-81, 99). In addition, Lulu Mae Thompson was paid for reporting activities prior to her joining of the Party (tr. 66, 77, 94, 99). While reporting to the F.B.I. on the activities of the Party, the Thompsons received money from the F.B.I. for both services and expenses.⁸

⁸ The witness Lulu Mae Thompson received around \$25.00 a month when she first started reporting and this was increased to \$50.00, then to \$75.00 (tr. 66-67, 77). Since her cessation of Party membership in March 1962, the witness received \$130.00 per month for some months and at the time of this hearing was receiving \$100.00 per month (tr. 77). Witness Howard Thompson received \$25.00 a month when he first began reporting in 1948 (tr. 99). During his fourteen years of reporting to the F.B.I. the witness Howard Thompson received total payments of approximately \$20,000.00 (tr. 80, 94, 99).

Full opportunity for cross-examination of these witnesses was afforded and pertinent copies of their prior reports to the F.B.I. were delivered to counsel for respondent for use in cross-examination. The cross-examination was directed mainly to items, such as money received from the F.B.I., going to possible interest of the witnesses.

There was no rebuttal of any of the testimony given by petitioner's witnesses and their testimony was mutually consistent and corroborative. Respondent's proposed findings did not raise specific matters going to the credibility of either of the witnesses. The Hearing Member, having observed the witnesses and considered the entire record, credits each of them.

Production of Reports of Petitioner's Witnesses

At the conclusion of the direct examination of petitioner's witnesses Lulu Mae Thompson and Howard Thompson, there were delivered directly to counsel for respondent by counsel for petitioner the receipts that each witness had signed for money received from the F.B.I., and the prior written reports made by each witness to the F.B.I. which counsel for petitioner considered to be statements within the purview of Title 18 U.S.C. Sec. 3500.⁴ At the same time there were delivered to the Hearing Member for *in camera* examination other documents representing information furnished to the F.B.I. by each witness. These documents were in two categories: (a) reports prepared by the witness, which petitioner's counsel conceded to be statements but considered not to contain any material which related to the subject matter of the witness' testimony, and (b) reports prepared by agents of the F.B.I. following oral interviews with the witness, which petitioner's counsel considered not to contain related matter within Title 18 U.S.C. Sec. 3500. (Sec. tr. 61, 87-88.)

⁴ Lists of reports turned over directly to counsel for respondent as to Lulu Mae Thompson appear at transcript pages 63-64; and those as to Howard Thompson at transcript pages 88-89.

These documents, numbering in the many hundreds, were examined by the Hearing Member *in camera*. One of the documents of the witness Lulu Mae Thompson was determined to relate to the subject matter of her testimony, and this was delivered to respondent's counsel (tr. 90). None of the other documents of either witness were determined to contain material relating to the subject matter of the witness's testimony (tr. 90). It was therefore unnecessary with respect to the category of documents in the form of memoranda prepared by agents of the F.B.I. on oral information furnished by the witnesses to determine whether the agents' memoranda qualified as statements of the witnesses under Title 18 U.S.C. § 3500 (tr. 90).

In addition to the above categories of documents, counsel for petitioner delivered to the Hearing Member one document common to the witnesses Lulu Mae Thompson and Howard Thompson, and one document of the witness Lulu Mae Thompson, from each of which excisions of unrelated portions were requested (tr. 61-62; 91-92). Appropriate excisions were made by the Hearing Member and the documents thereupon turned over to counsel for respondent (tr. 64, 91).

Counsel for respondent noted an objection to the Hearing Member's rulings with respect to the witnesses' documents (tr. 91). The objections were thereupon made Board exhibits, sealed, as follows: the Lulu Mae Thompson documents, "Proctor case—Board Exhibit 1—Lulu Mae Thompson"; and the Howard Thompson documents, "Proctor case—Board Exhibit 2—Howard Thompson" (tr. 90-91).

THE ISSUES

The primary issue in this proceeding is whether the respondent, Roscoe Quincy Proctor, is (or at the times mentioned in the petition, was) a member of the Communist Party of the United States of America. Another issue, raised by counsel for respondent, is whether the Commu-

nist Party of the United States is a Communist-action organization. (See Respondent's Proposed Finding No. 1.)

With respect to the matter of the Communist Party, counsel for petitioner, during the hearing, requested the Hearing Member to take official notice for the purpose of this proceeding of an order which the Board entered and of subsequent proceedings in the matter of the Communist Party of the United States of America (tr. 34-35). Counsel for respondent objected to such official notice on the grounds that respondent Proctor was not a party to the proceedings involving the Communist Party and was not bound by those proceedings and hence they are not competent with respect to him in this proceedings (tr. 36).

Upon consideration of an identical request for official notice in the Albertson case where similar objections were made, the unanimous Board stated as follows (Attorney General v. Albertson, Report and Order of the Board, dated October 29, 1962, pp. 7-8):

The clear intent of the Act is that once an order of this Board has become "final" requiring an organization to register as a Communist-action organization, the issue whether the organization is of such type is not to be relitigated in subsequent proceedings for the registration of a member of the organization. The Act provides for the registration of any member of an organization concerning which "there is in effect a final order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization." (Section 8(a).) Thus an "issue" in a proceeding for the registration of an individual member is whether there is in effect a final order requiring the registration of the organization to which the individual is alleged to belong.⁸ Counsel for respondent did not, and could not dispute the fact that

⁸ The Act provides full opportunity for an organization that has been determined to be a Communist-action organization to obtain subsequent relief from the registration requirements by proper showing that it is not then a Communist-action organization. Section 18(b) and (i)(1).

there is in effect a final order of the Board requiring the Communist Party, U. S. A., to register as a Communist-action organization. (See the facts set forth below under the subheading "Official Notice.")

It would be a plainly unreasonable application of the Act to require that in a proceeding involving an individual, if shown to be a member of the Party and thus fairly represented in the Party proceeding, the status of the Party must nonetheless be relitigated.* To do so would frustrate the purpose of the Act to obtain disclosure of the members of a Communist-action organization.

* The Board, in the proceeding involving the Communist Party, on the basis of a record comprising over 14,000 pages of oral testimony and hundreds of exhibits, in which the Party was represented by competent counsel, determined the Party to be a Communist-action organization as defined in the Act.

FINDINGS OF FACT

1. *Official Notice*

Respondent's objection to the taking of official notice was overruled and pursuant to Board precedent in the Albertson case, official notice is taken of the following, which are hereby deemed to be facts for the purposes of this proceeding. (See tr. 36-40.) No evidence was offered by respondent to rebut these facts:

1. The Subversive Activities Control Board on April 20, 1953, entered an order requiring the Communist Party of the United States of America to register as a Communist-action organization under section 7 of the Subversive Activities Control Act of 1950;
2. The United States Court of Appeals for the District of Columbia Circuit on July 30, 1959, entered its judgment in *Communist Party of the United States of America v. Subversive Activities Control Board*, which affirmed the order of the Board requiring the Communist Party of the United States of America to register as a Communist-action organization;

3. The Supreme Court of the United States on October 10, 1961, entered its mandate which affirmed the judgment of the United States Court of Appeals for the District of Columbia Circuit, which judgment had been entered by the said United States Court of Appeals on July 30, 1959, in Communist Party of the United States v. Subversive Activities Control Board;

4. More than ten (10) days have elapsed since the Supreme Court entered its mandate on October 10, 1961, in Communist Party of the United States of America v. Subversive Activities Control Board, No. 12, October Term, 1960;

5. There was published in the Federal Register for October 21, 1961, Volume 26, No. 204, at page 9923, a notice by the Subversive Activities Control Board of the fact that the order of the Board requiring the Communist Party of the United States of America to register as a Communist-action organization under section 7 of the Subversive Activities Control Act of 1950 became final on the 20th day of October 1961; and

6. More than sixty (60) days have elapsed since October 20, 1961.

It was stipulated by counsel and the Hearing Member finds: that the Communist Party of the United States of America has not registered with the Attorney General nor filed a registration statement pursuant to section 7 of the Act; that no officer of the Communist Party nor any authorized representative of the Party has registered for and on behalf of the organization pursuant to section 7(h) of the Act; and, that the respondent, Roscoe Quincy Proctor, has not registered or filed a registration statement with the Attorney General pursuant to section 8(a) and (c) of the Act (tr. 33-34, 36).

2. Evidence of Party Membership of Respondent

Petitioner's witnesses Lulu Mae Thompson and Howard Thompson identified the respondent, Roscoe Quincy Proctor, by pointing him out as present in the hearing room, seated at counsel table (tr. 47, 81, 72-73). The Thompsons testified to meetings of specific, constituent, organizational parts of the Communist Party of the United States of America which the witnesses attended and at which Proctor was among those present and participated. Proctor did not take the stand to deny or explain the evidence furnished by petitioner's witnesses and no witnesses were presented by respondent to rebut or contradict that evidence. Findings based upon the testimony of these witnesses will now be made.

a. Testimony of Lulu Mae Thompson

In November 1959, the witness Lulu Mae Thompson attended the first session of the Convention of the Communist Party of Northern California held in Oakland, California (tr. 47).⁵ There were discussions of various topics in preparation for the 17th National Convention of the Communist Party and the election of delegates to the National Convention took place (tr. 47). The respondent Proctor and the witness Lulu Mae Thompson were among those elected delegates to the National Convention (tr. 48).

The witness attended all sessions of the National Convention of the Party held in December 1959 in New York City (tr. 48). Proctor was present at the sessions of the National Convention (tr. 48). He represented the Northern California delegation on the Negro Commission and was also appointed as one of a committee of three to visit William Z. Foster, the chairman emeritus of the Communist Party, who was unable to attend the convention because of illness (tr. 48).

⁵ The respondent Proctor was present at this and at all subsequent meetings testified to by the witness Lulu Mae Thompson.

During the convention the respondent and the witness attended a caucus of the Northern California delegation which had been called for the purpose of selecting nominees to represent Northern California on the National Committee (tr. 48-49). Proctor was nominated and accepted the nomination (tr. 49).

The National Convention adopted certain recommended changes in the Constitution of the Communist Party, U. S. A. (tr. 51-52). Under the Constitution, as amended, only members of the Party who had been in good standing for at least five years were eligible for election to the National Committee, and to be eligible for election as a State officer or member of the State Committee a member had to be in good standing for at least two years (A.G. Ex. 1, pp. 10 and 15, and A.G. Ex. 2). The witness is without knowledge of any changes in the Constitution from December 1959 until March 1962 when she left the Party (tr. 52-53).

During the last session of the National Convention, election of National Committee members was held (tr. 49). The chairman of each delegation went to the rostrum where he received the ballots from the Elections Committee. He then returned to his delegation and distributed the ballots. After the delegates marked them, the delegation chairman collected them and returned them to the Elections Committee which retired from the room to count them. The Elections Committee later returned and announced the results of the election (tr. 49). The witness recalled the name of Roscoe Proctor being read as one of those elected to the National Committee of the Party (tr. 49-50).

Following the announcement of the Elections Committee, the convention itself was adjourned, and the delegates who had not been elected to the National Committee retired from the convention hall (tr. 50). The newly elected National Committee then went into session (tr. 50). Later, Proctor and another member of the National Committee

from Northern California, went to Mrs. Thompson's room and reported the results of the meeting of the new National Committee, including the names of those elected national officers (tr. 50). To the witness' knowledge, there has been no National Convention of the Communist Party from December 1959 until she left the Party in March 1962 (tr. 50).

In February 1960, the witness attended the second session of the Northern California District Convention of the Communist Party held in Oakland, California, at which there were reports on the National Convention as well as reports from several of the Commissions (tr. 53-54). At this District Convention, elections were held as a result of which Proctor was elected, and the witness Lulu Mae Thompson reelected, to membership on the Northern California District Committee of the Party (tr. 54).

In February 1961, the respondent and the witness were present at a meeting of the District Committee of the Communist Party of Northern California held in San Francisco (tr. 54-55). At this meeting Proctor reported on his attendance at a Communist Party school which he had attended in New York City (tr. 55). Among the many subjects he had studied while there were historical materialism, the class struggle, and "the 81 party conference statement." (Tr. 55.) It was announced at this meeting that Proctor had been given responsibility for the peace work of the outlying counties of the Communist Party in Northern California (tr. 55).

At an April 1961 meeting of the District Committee of the Party held in San Francisco, Proctor reported to the committee on the recent San Francisco peace demonstrations, saying they had been among the largest in the nation and had had youth and Negro participants (tr. 55-56).

A Communist Party Northern California District Committee meeting was held at the home of the chairman of the Northern California District in August 1961 (tr. 54,

56). Proctor reported on the Citizens Committee for Constitutional Liberties (tr. 56). According to Proctor the present purpose of the Committee is to disseminate propaganda, but in the event arrests were made in the Party, it would become a defense committee (tr. 56). The chairman of the Party's Northern California District asked Proctor to take the chairman's place while he was on vacation (tr. 54, 56).

The Party's District Committee of Northern California met in September 1961 in San Francisco (tr. 56-57). Proctor again reported on the Citizens Committee for Constitutional Liberties (tr. 57). He stated that the Citizens Committee had representation of Party and non-Party people, and that the District Board of the Communist Party of Northern California was to meet and establish policies for the Communist Party members working in this committee (tr. 57).

In January 1962, the representatives of the outlying counties of the Communist Party of Northern California met at Proctor's home in Berkeley (tr. 57-58). The chairman of the Party's Northern California District announced that Proctor had been assigned "to ride herd" on the People's World fund campaign then in progress (tr. 54, 58). Proctor's report to the meeting included his recommendation that all Communists review Gus Hall's article in the August issue of Political Affairs (tr. 58). Proctor announced that Hall would be in the San Francisco Bay area later in January, and that many meetings were being arranged for him (tr. 58).

Proctor's home was the location for another meeting of representatives of the outlying counties of the Communist Party of Northern California in February 1962 (tr. 58). In his report on the visit of Gus Hall to the area, Proctor stated that Hall had addressed a meeting of all of the national leaders of the Party on the Pacific Coast and had recommended that the Party on the Pacific Coast hire a

youth director to work with youth along Communist Party lines (tr. 59).

In March 1962, the witness attended still another meeting of the representatives of the outlying counties of the Communist Party of Northern California (tr. 59). This, too, was held at Proctor's home (tr. 59). Proctor reported on weekly meetings of the Citizens Committee for Constitutional Liberties (tr. 59). He also stated that he had attended a meeting of the national leaders in Detroit on the previous weekend (tr. 60).

b. Testimony of Howard Thompson

In February 1961, the witness and Proctor, along with other "comrades," drove together and attended a meeting of the Sacramento-San Joaquin Valley Section of the Communist Party of Northern California (tr. 86).

In March 1961, and in the latter part of June 1961, the witness attended meetings of the District Committee⁶ of the Communist Party of Northern California held in San Francisco at which respondent was present (tr. 82, 86).⁷ At a meeting of the same District Committee in August 1961, Proctor gave a report on the organization of a citizens committee to resist the Supreme Court decision and which was later to become a defense committee (tr. 83). The District Committee assigned themselves a quota of \$3500 to finance the citizens committee (tr. 83). It was also announced at this meeting that Proctor would be in charge of the District Board of the Communist Party of Northern California during Micky Lima's absence on vacation (tr. 83). The District Committee voted to concur with the

⁶ The witness was not a member of the District Committee but attended District Committee meetings as an observer (tr. 92-93). The witness did not attend the March 1961 meeting in full (tr. 93).

⁷ Respondent was present at this and at all meetings to which the witness Howard Thompson testified to herein.

actions of the National Committee in delegating power to the National Executive Committee (tr. 83).

At a Communist Party meeting of the District Committee members from the outlying counties, held at Proctor's home in February 1962, the respondent reported that Gus Hall had been in the area, had given reports on the expulsions in New York, and had suggested that a full-time person be delegated for youth work (tr. 84-85). Proctor further reported that the National Committee members of the West Coast had held a meeting, and that the Party would carry on its work to organize the committees to combat the effects of the Supreme Court decision (tr. 84-85).

CONCLUSIONS

The facts show that the respondent, Roscoe Quincy Proctor, was duly nominated and elected a member of the high ranking National Committee of the Communist Party of the United States of America, and thereafter participated in the meetings of the committee. He was also elected, in February 1960, a member of the Northern California District Committee of the Party, and was shown to have been serving as such in February of 1962, a few months before the Attorney General filed his petition instituting this proceeding. Under the Communist Party's Constitution, eligibility for these positions required membership in good standing in the Party for five years for the National Committee and two years for the District Committee.

Proctor was given responsibility for certain work of the Party in Northern California and thereafter reported to Party groups on the progress of the work. In February 1961, Proctor reported to the District Committee of the Party in Northern California on a Communist Party school he had attended in New York City. It was shown that on three occasions in the year 1962, representatives from vari-

ous Party localities met with Proctor at his home to conduct Party business. At one of these meetings Proctor stated that he had recently attended a meeting of the national leaders in Detroit. At a meeting of the Northern California District Committee of the Party in August 1961, it was announced that Proctor would be in charge of the District Board while the chairman was on vacation.

The facts that have been found herein, some of which are summarized above, were established by uncontroverted evidence presented by two witnesses one or both of whom were present as members of the Communist Party at the meetings in which Proctor participated. The witness Lulu Mae Thompson was a member at the same time as Proctor of the Northern California District Committee of the Party.

The evidence of record clearly establishes that the respondent, Proctor, by both his words and actions, had and continues to have the desire and intent to be a member of the Communist Party, and that the Party has and continues to recognize and consider him to be a member. It is found and determined that the evidence preponderates to establish that Proctor is, and since at least the close of the year 1959 has been, a member of the Communist Party of the United States of America.

There is in effect, and has been since October 20, 1961, a final order of the Subversive Activities Control Board requiring the Communist Party, U. S. A., to register under the Subversive Activities Control Act as a Communist-action organization. The respondent, Roscoe Quincy Proctor, who has not registered under section 8 of the Subversive Activities Control Act, is in fact required to register under such section.

RECOMMENDATION

It is recommended that the Board issue an appropriate order requiring the respondent, Roscoe Quincy Proctor, to register under and pursuant to section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization.

(signed) **FRANCIS A. CHERRY**
Francis A. Cherry
Hearing Member

December 31, 1962
Washington, D. C.

Report of the Board
(Filed Jan. 18, 1963)

The Hearing Member, by Recommended Decision issued December 31, 1962, recommended, on the basis of detailed findings of fact, that the Board issue an order requiring respondent, Roscoe Quincy Proctor, to register under and pursuant to section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization.

Exceptions to the Recommended Decision were filed on January 9, 1963, on behalf of respondent. Neither party requested oral argument and such argument is unnecessary.

Respondent's exception 1 renews, and thereby preserves, objection to the entry of a registration order on the ground that the entry of such an order would violate certain rights and privileges under the Constitution of the United States. The Board, as an agency created by Congress, does not pass on the constitutionality of the Act under which the Board functions. Under section 14 of the Act, respondent has the right to judicial review of a registration order and

in that review may obtain determination by the courts of the contentions as to the constitutionality of the Act.

By exception 2 respondent attacks, in general, the sufficiency of the evidence to establish that respondent is a member of the Communist Party within the meaning of the Subversive Activities Control Act. It is argued that the evidence was "irrelevant, remote, immaterial and incompetent." Exception 6 attacks the crediting of petitioner's witnesses, and asserts that their testimony was obtained and admitted in violation of the First and Fourth Amendments.

The subsidiary facts from which the Hearing Member arrived at the finding of membership of respondent in the Communist Party were not controverted and, except for the broad, overall assertions in respondent's exceptions, are not disputed. These facts, which are set forth in detail at pages 9 to 14 of the Recommended Decision, and are summarized at pages 14 and 15 were based upon the personal knowledge and experiences of the witnesses. Unless the testimony of the witnesses is to be completely disregarded, the evidence shows respondent's election to official positions in the Communist Party, his admission to and participation in the councils of the organization, and his having been assigned duties and responsibilities in connection with the work of the Communist Party. These facts are strong and convincing evidence of membership. They clearly establish a mutual agreement and intention on the part of the Party and the respondent that respondent is and has been a member. The assertions that the facts are irrelevant, immaterial and incompetent are rejected.

The Board has reviewed and considered the direct and cross-examination of petitioner's witnesses upon respondent's assertion "that none of them was worthy of credence." The exception does not say why it is asserted that the witnesses should not be credited. The Hearing Member observed the witnesses and accepted them. Each was

an informant for the Federal Bureau of Investigation and acting as such during the periods of membership in the Communist Party about which the testimony was given. As pointed out by the Hearing Member, the testimony was mutually consistent. There was full opportunity for cross-examination of the witnesses and full opportunity was also afforded for the presentation of rebuttal testimony. The Board does not find any basis in the record for respondent's blanket attack upon the credibility of the witnesses. The fact that the witnesses testified to the operations and activities which they were paid to observe does not render their testimony inadmissible under the First and Fourth Amendments.

Respondent's exception 3 raises the question as to the time membership must be found, and the grounds and reasons therefor. The Hearing Member in his Recommended Decision concluded that respondent "is, and since at least the close of the year 1959 has been, a member of the Communist Party of the United States of America." (Recommended Decision, page 15.) Consideration of the record as a whole fully supports this finding. The evidence shows a continuing recognition by the Party of respondent as a member from a time prior to his nomination and election to the National Committee in December of 1959 up to at least a few months before the Attorney General's petition was filed. The record also gives many facts evidencing respondent's intention to be a member continuously throughout these years, such as meetings he held at his home to discuss Party business with other members of the Party, and his steady attendance at meetings of Party organizational components. While no one fact standing alone establishes membership at a particular time, the composite of the facts convinces the Board that respondent is and has been a member of the Communist Party.

Respondent's exceptions 4 and 5, regarding the treating of the Communist Party of the United States of America as

a Communist-action organization and the taking of official notice of certain facts with respect to the Board's order requiring registration of the Communist Party pursuant to the provisions of the Act, are rejected. The reasons are set forth in the Report and Order of the Board in Attorney General, Petitioner v. William Albertson, Respondent, Board Docket No. I-1-62, and are quoted at pages 7 and 8 of the Recommended Decision herein.

Respondent, in exception 7, contends that all of the reports made by petitioner's witnesses to the F.B.I. should have been produced to the respondent, and that excisions should not have been made from any of the reports which were produced. The Board has itself examined all of the documents. The Board is satisfied that there were turned over to respondent all of the documents which related to the subject matters about which the witnesses testified. (See Recommended Decision, pages 5 and 6.) The few excisions were of clearly unrelated matter and were proper. Since all reports containing information relating to the testimony given by the witnesses were in fact produced and since respondent is not entitled to conduct a fishing expedition through unrelated, irrelevant documents, the exception is without merit.

Respondent's exception 8 is as follow:

Respondent excepts to the failure to find that all the alleged activities of respondent testified to were constitutionally protected, relating solely to discussion of problems of Negroes (Tr. 48, 54), youth (Tr. 59-85), peace (Tr. 55-56), constitutional liberties (Tr. 56, 57, 59, 83), agricultural workers (Tr. 81), speakers (Tr. 58, 84), and customary organizational activities (elections, Tr. 49-51; fund raising, Tr. 83; literature, Tr. 58).

The basic facts testified to in this proceeding were Proctor's election to certain official positions in the Communist Party and numerous meetings at which the wit-

nesses stated he was present and participated and which were described as Communist Party meetings. Among the activities of Proctor at Communist Party meetings were reporting on matters in which the Party had an interest or connection. The "activities" were admissible to show the nature of the meetings and Proctor's familiarity with and participation in the business of the Communist Party.¹ Determination whether the matters of Party business in which Proctor was shown to have been active were "constitutionally protected" is not an issue in this proceeding. Proctor's activities are merely relevant items of evidence in determining whether he is a member of the Communist Party. Membership is the fact to be determined. Assuming arguendo that the evidence of membership consists of constitutionally protected conduct, this does not make the evidence inadmissible to establish membership.

Respondent's exception 9 is to the effect that the two witnesses, Lulu Mae and Howard Thompson, cannot be said to have been present at meetings of the Communist Party as members because they "were present as paid spies and were not members within the meaning of the Communist Party Constitution of 1957, as amended in 1959."² The testimony of the witnesses that they were members of the Party and their testimony showing that

¹ For instance, during Proctor's presence at a meeting of the District Committee of the Communist Party of Northern California it was announced that he had been given responsibility for the Party's "peace work" of the outlying counties (tr. 55; Recommended Decision, page 11). He was shown to have reported to subsequent meetings of the District Committee on a peace demonstration and on the Citizens Committee for Constitutional Liberties (tr. 55-56; Recommended Decision, page 12). At another District Committee meeting where he reported on the Citizens Committee he stated that the District Board of the Party was to meet and establish policies for the Party members working in this committee (tr. 57; Recommended Decision, page 12).

² The reliance on the Communist Party Constitution, although not supported by any record citation, is taken as referring to Attorney General's Exhibits 1 and 2 which constitute the constitution as amended at the 1959 National Convention of the Party, and are the only evidence of record giving the provisions of the Constitution.

they were accepted as members by the Party was not controverted.⁸ There was no evidence that they had been expelled under the provisions of the Party constitution. The cases are numerous in which the courts have accepted person acting as informants for the F.B.I. during their membership in the Communist Party.

In number 10, respondent excepts to the failure to find the total payments of approximately \$17,956 to the witness Lulu Mae Thompson. The Hearing Member considered the fact that the witness was paid for reporting activities prior to her joining the Communist Party and during and after her membership (Recommended Decision, page 4). Increases in monthly payments which she received were noted by the Hearing Member. The witness was asked on cross-examination if she had received \$17,956.65 in expenses for her services from the F.B.I. over the period from early 1951 to the present, and the witness replied that, "it is possible" (tr. 64-70). The record is inconclusive on the exact total of the payments. The testimony as to the possibility of the total is noted. The exception is without merit.

Respondent's final exception ,number 11, is to the statement adopted by the Hearing Member that the purpose of the Act is to obtain disclosure of the members of a Communist-action organization. Respondent states that, "the terms, legislative history and litigation under the Act make it clear that the Act's purpose is to harass members of the Communist Party and other organizations in disfavor with the government and to interfere with their constitutionally-protected activities." Suffice it to say that respondent's malediction of the Congressional purpose is unwarranted from the very "terms, legislative history and litigation" relied upon. The exception is rejected.

⁸ During an early period of his membership in the Party, the witness Howard Thompson was suspended but thereafter fully accepted as an active member (tr. 81, 80, 94).

Upon consideration of the record, the Recommended Decision, and the exceptions thereto, the Board finds that the Recommended Decision should be and the same is hereby adopted as the findings and conclusions of the Board.

The Board finds and determines from the preponderance of the evidence that the respondent, Roscoe Quincy Proctor, is a member of the Communist Party of the United States of America, a Communist-action organization. There is in effect and has been since October 20, 1961, a final order of the Board requiring the Communist Party to register under section 7(a) of the Act as a Communist-action organization, more than thirty days have elapsed since such order became final, and such organization is not registered. The respondent, Roscoe Quincy Proctor, who has not registered or filed a registration statement with the Attorney General pursuant to section 8(a) and (c) of the Act is in fact required to do so.

Accordingly, an order requiring the respondent to register under section 8 of the Act accompanies this Report of the Board.

By the Board:

(signed) FRANCIS A. CHERRY, *Member*
Francis A. Cherry

(signed) THOMAS J. DONEGAN, *Member*
Thomas J. Donegan

(signed) JAMES R. DUNCAN, *Member*
James R. Duncan

(signed) EDWARD C. SWEENEY, *Member*
Edward C. Sweeney

_____, *Vacancy*

January 18, 1963
Washington, D. C.

Registration Order

(Filed Jan. 18, 1963)

The Board, after appropriate hearing, having this day issued a report in writing in which it states its findings as to the facts and its conclusion that the respondent, Roscoe Quincy Proctor, is required to register under the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization as defined in the Act, it is

ORDERED that the respondent, Roscoe Quincy Proctor, shall register under and pursuant to section 8(a) and (c) of the Subversive Activities Control Act of 1950, as amended, as a member of the Communist Party of the United States of America, a Communist-action organization, and it is

FURTHER ORDERED that a copy of this **REGISTRATION ORDER** be served upon the respondent, Roscoe Quincy Proctor.

By the Board:

(signed) **FRANCIS A. CHERRY, Member**
Francis A. Cherry

(signed) **THOMAS J. DONEGAN, Member**
Thomas J. Donegan

(signed) **JAMES R. DUNCAN, Member**
James R. Duncan

(signed) **EDWARD C. SWEENEY, Member**
Edward C. Sweeney

, *Vacancy*

January 18, 1963
Washington, D. C.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,623

ROSCOE QUINCY PROCTOR, *Petitioner*,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent*

Petition for Review

(Filed Feb. 14, 1963)

Roscoe Quincy Proctor, by his attorneys, petitions the Court to review and set aside the order of the Subversive Activities Control Board (hereafter called the Board) issued January 18, 1963, in the proceeding before the Board entitled Robert F. Kennedy, Attorney General of the United States, Petitioner v. Roscoe Quincy Proctor, Respondent, Docket No. I-10-62.

NATURE OF THE PROCEEDINGS

The order involved herein was issued under section 13(g)(2) of the Subversive Activities Control Act of 1950 (hereafter called the Act), 50 U.S. Code § 792(g)(2). It requires the petitioner herein to register under section 8(a) and (c) of the Act, 50 U.S. Code § 787(a) and (c), "as a member of the Communist Party of the United States of America, a Communist-action organization." The order was issued after proceedings before the Board initiated under section 13(a) of the Act, 50 U.S. Code § 792(a), by a petition of the Attorney General alleging that petitioner was a member of the Communist Party of the United States of America and that neither he nor that organization had registered under the Act.

JURISDICTION AND VENUE

Jurisdiction and venue exist in this Court by virtue of section 14(a) of the Act, 50 U.S. Code § 793(a), which so far as is pertinent provides:

“The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, . . . may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside.”

GROUNDS FOR RELIEF

1. Sections 8 and 13 of the Act, on their face and as applied, are unconstitutional. They violate the Fifth Amendment privilege against self-incrimination, which petitioner hereby asserts, and the First Amendment; deny petitioner due process of law, a judicial trial and trial by jury, contrary to the Fifth and Sixth Amendments, Art. III, § 1 and § 2, cl. 3; and constitute a bill of attainder.
2. The findings and order of the Board are based on erroneous constructions of the Act.
3. The findings and order of the Board are not supported by a preponderance of the evidence.
4. The findings and order of the Board are based on irrelevant evidence.
5. The Report of the Board fails to define adequately the grounds and reasoning of the order.
6. The Board erred in holding that petitioner was bound by the Board's prior determination that the Communist Party was a Communist-action organization.

RELIEF PRAYED

Wherefore, petitioner prays that the Court set aside the aforesaid order of the Board.

Respectfully submitted,

s/ JOHN J. ABT
John J. Abt
320 Broadway
New York 7, N. Y.

s/ JOSEPH FORER
Joseph Forer
711 14th St. N. W.
Washington 5, D. C.

Attorneys for Petitioner

[fol. 62]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,492

WILLIAM ALBERTSON, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

No. 17,623

ROSCOE QUINCY PROCTOR, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petitions for Review of Orders of the Subversive Activities Control Board.

Messrs. John J. Abt, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, and *Joseph Forer*, for petitioners.

[fol. 63] *Mr. Kevin T. Maroney*, Attorney, Department of Justice, with whom *Assistant Attorney General J. Walter Yeagley*, *Messrs. Frank R. Hunter, Jr.*, General Counsel, Subversive Activities Control Board, and *George B. Searls* and *Mrs. Lee B. Anderson*, Attorneys, Department of Justice, were on the brief, for respondent. *Mr. Peter Paul Hanagan*, Attorney, Subversive Activities Control Board, also entered an appearance for respondent.

Mr. Leonard B. Boudin filed a brief in No. 17,623 on behalf of National Lawyers Guild, as *amicus curiae*, urging reversal.

[File endorsement omitted]

OPINION—Decided April 23, 1964

Before Bazelon, *Chief Judge*, and Bastian and McGowan,
Circuit Judges.

McGOWAN, Circuit Judge: These are proceedings for review, pursuant to § 14a of the Subversive Activities Control Act (50 U.S.C. § 781 *et seq.*), of two separate orders of the Subversive Activities Control Board requiring petitioners, Albertson and Proctor, to register under Section 8 of the Act as members of "the Communist Party of the United States of America, a Communist-action organization." Petitioners do not claim any deviation by the Board from the prescribed statutory procedure; nor do they assert that the orders are not supported by adequate evidence. Rather, they attack the orders on the ground that the underlying statutory provisions are, for various reasons, unconstitutional.

These claims of constitutional infirmity fall into two groups. The first is compounded of arguments which import that the orders are invalid because of certain consequences which might flow from failure to comply with them. We do not consider these questions ripe, as yet, for judicial consideration. The second group is addressed to the proposition that the bare existence of orders, without more, impairs petitioners' constitutional rights. As to these grounds, we affirm the Board's action.

[fol. 64]

I

The scheme of the statute involved in these cases is that, if a Communist-action organization fails to register as required by an order of the Board (issued pursuant to Sections 7 and 13 of the Act) and thereby fails to disclose its membership, the members individually may be compelled to register as such.¹ This individual obligation

¹ Section 8 of the Act provides:

(a) Any individual who is or becomes a member of any organization concerning which (1) there is in effect a final

attaches only after default by the organization, and only after the fact of membership has been found to exist in a proceeding before the Board initiated by the Attorney General against a particular person.² Registration itself [fol. 65] consists of filing a signed registration form identifying oneself as a member of the organization and giving one's address.³ The statute also provides that this act of

order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization, (2) more than thirty days have elapsed since such order has become final, and (3) such organization is not registered under section 7 of this title as a Communist-action organization, shall within sixty days after said order has become final, or within thirty days after becoming a member of such organization, whichever is later, register with the Attorney General as a member of such organization.

² Section 13 of the Act provides:

(a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * *

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

* * *

(2) that an individual is a member of a Communist-action organization (including an organization required by final order of the Board to register under section 7(a) of this title, [sic] it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order requiring him to register as such under section 8 of this title.

² Form IS-52a, Budget Bureau No. 43-R414 (Ed. 9-6-61).

registration is to be accompanied by the filing of a separate registration statement containing such information as the Attorney General may, by regulation, prescribe.⁴ Pursuant to this grant of authority, the Attorney General has called for such additional information as date and place of birth, *aliases* used during the past ten years, and all offices held in the organization presently or during the preceding twelve months, together with a description of the duties performed during any such tenures of office.⁵ Failure by an individual to comply with a Board [fol. 66] order requiring him to register is punishable by a fine of not more than \$10,000, or imprisonment for not more than five years, or both, with each day of non-compliance constituting a separate offense. These penalties follow upon conviction pursuant to the usual criminal processes established independently of the Act.

These proceedings were initiated by the Attorney General's representations to the Board that petitioners were members of the Communist Party of the United States; that that organization had theretofore been found by the Board to be a "Communist-action organization" and ordered to register under Section 7 of the Act; that such organization had not registered; and that, accordingly, the Board should order petitioners to register under Section 8. The answers filed by petitioners denied that the Communist Party was a "Communist-action organization"; refused, by reason of a claim of privilege against self-incrimination, to answer the allegations of petitioners' membership in the Party; and asserted the invalidity of Sections 8 and 13 of the Act on various constitutional

⁴ Section 8(c) of the Act provides:

The registration made by any individual under subsections (a) or (b) of this section shall be accompanied by a registration statement to be prepared and filed in such manner and form, and containing such information, as the Attorney General shall by regulations prescribe.

⁵ Form IS-52, Budget Bureau No. 43-R301.2.

grounds. After separate hearings at which the Attorney General adduced evidence and petitioners did not, the orders under review were issued.

II

Petitioners press strongly the contention that the membership registration provisions of the Act collide directly with their Fifth Amendment immunity against self-incrimination; and that, because of this conflict, the Board's orders should now be declared invalid. Congress has, they say, so legislated with respect to the Communist Party that membership therein has taken on direct and serious criminal connotations, creating dangers of such a nature as to relieve against any duty, however imposed, of self-revelation. The argument, in substance, is that there is no room within the Fifth Amendment for the simultaneous [fol. 67] operation of the contrasting legislative approaches of prohibition on pain of criminal punishment, on the one hand, and regulation through the publicity of compelled disclosure, on the other.

That the point is not without force is evident from the recent decision of this court in *Communist Party v. United States*, — U.S.App.D.C. —, — F.2d — (No. 17,583, decided Dec. 17, 1963). That was an appeal by the Communist Party of the United States from its conviction by a jury on an indictment for failing to register as a Communist-action organization, as required by a Board order issued pursuant to Sections 7 and 15 of the Act. We reversed and remanded for a new trial on the ground that, since the registration requirements involved action on behalf of the organization by an officer or authorized individual who would thereby identify himself with the Party, the self-incrimination shield of the Fifth Amendment placed the prosecution in a criminal trial under the necessity of proving, as an essential element of the crime charged, the availability to the defendant organization of an individual willing to effect the registration and to assume the concomitant risk of criminal exposure. There having been a defi-

ciency of proof in this respect, we set aside the Party's conviction but afforded the Government an opportunity to supply such proof in a new trial.

That case, however, presented us with an appeal from a criminal conviction for refusing to comply with a Board order, and not with a statutory review of the order itself. The latter proceeding, indeed, had already taken place, culminating in the Supreme Court's decision in *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961), upholding the Board's order which found the Communist Party to be a "Communist-action organization" and which required it to register as such. In that review proceeding, the Party advanced many [fol. 68] contentions with respect to the invalidity of the order and of the Act under which it was issued. Many of these were founded in the Constitution. None prevailed, and most were disposed of on the merits. A conspicuous exception in this latter respect was the self-incrimination attack upon the requirement that the Party register.

The Supreme Court explicitly refrained from passing upon the merits of this challenge because it was premature. *Communist Party v. SACB*, 367 U.S. 1,105-110 (1961). The Court pointed out that there were certain contingencies standing between the bare issuance of the order requiring registration and its enforcement as against a claim of the privilege. One was whether the privilege would in fact be claimed, and another was whether, if claimed, it would be honored. Over and above these matters, however, the Court also noted that any disallowance of a claim of the privilege in the context of this Act is likely to raise complex and difficult legal issues which can best be dealt with in the precise factual setting in which they finally arise. Questions of this nature, said the Court, are "questions which should not be discussed in advance of the necessity of deciding them"; and it went on to say that the point when that necessity exists, if ever, is "when enforcement proceedings for failure to register are instituted against the Party or against its officers."

We think the same reasoning extends to the registration requirements applicable to members of the Party. It is pressed upon us that, unlike the situation as it was before the Supreme Court, here the privilege has been claimed and denied. But the facts relied upon in support of this contention are, in respect of the claim, that the privilege was advanced in petitioners' answers to the Attorney General's petition to the Board initiating these proceedings; and that it was asserted again in the petition for review in this court. With respect to denial, this [fol. 69] is said to reside in the action of the Attorney General in continuing the proceedings before the Board in the face of the answers, the action of the Board in issuing the orders, and the action of the Attorney General, as the Board's lawyer, in defending the orders before this court.

But these circumstances were, of course, all present in the record before the Supreme Court in the *Communist Party* review proceeding, and do not, in and of themselves, offer any basis for differentiating this case from that in terms of prematurity. What is new since the earlier decision is the fact that the Attorney General did receive and reject a claim of privilege anonymously tendered on behalf of officers of the Party, and did move to have the Party indicted, tried and convicted in criminal proceedings for failure to comply with the registration order. It could presumably be urged upon us, although petitioners appear not to have done so in their papers, that this demonstrates beyond peradventure that any claim of privilege by petitioners as a justification for not registering will inexorably be followed by criminal prosecution, and that this court, anticipating that certainty, should go ahead now and decide the issues relating to the privilege.

It is to be remembered, however, that the criminal prosecution of the Party has thus far resulted in a judicial determination that the registration requirement of the Act, at least in the case of the Party and its officers, presents major problems in respect of the Fifth Amendment privi-

lege. It seems unlikely that these problems are without parallel in the case of mere members of the Party. In any event, it is by no means clear as of this moment, any more than it was at the time of the Supreme Court decision, that affirmance of the orders before us will inevitably result in the invocation of criminal processes *vis-a-vis* the petitioners for failure to register pursuant to a claim of [fol. 70] Fifth Amendment immunity. If denial of that claim in the future is pressed to the point of criminal prosecution, it remains true that, insofar as the protective reach of the Fifth Amendment is concerned, that proceeding "will provide an adequate forum for litigation of that issue." *Communist Party v. SACB*, 367 U.S. at 107. Apart from the natural apprehensions of petitioners with respect to the burdens of criminal prosecution, we believe it to be a better forum in the sense that legal issues can be resolved in the light of the peculiar factual setting in which they arise. Be this as it may, however, it is a forum which may never be reached, and we see no reason to anticipate decisions which may never have to be made.

Nor can we at this stage vacate the order on the ground that the statute is unconstitutional because it compels the production of potentially incriminating information while allowing "the exercise of the Fifth Amendment privilege only under circumstances which effectively nullify the Amendment's protection." *Communist Party v. SACB*, 367 U.S. at 109. See *Boyd v. United States*, 116 U.S. 616 (1886). Compare *Communist Party v. SACB*, 96 U.S.App.D.C. 66, 115-16, 223 F.2d 531, 580-81 (1954) (Bazelon, J., dissenting). Whether the Subversive Activities Control Act is such a statute may not be determined, as the Supreme Court said in 1961, until the question is raised in a criminal prosecution.*

* Two other contentions made by petitioners fall within the sweep of what we have said hereinabove about ripeness. One is that the Act deprives petitioners of their right to a jury trial. This rests upon a reading of the statute as making the administrative de-

[fol. 71]

III

We turn now to those issues which are presently ripe for review. The same arguments here advanced were, for the most part, raised in respect of the registration order directed to the Communist Party, and were rejected in the 1961 opinion of the Supreme Court. Though different considerations may perhaps arise when, as here, the contentions are made on behalf of individuals, as distinct from the organization of which they are members, we nevertheless consider that case to be largely determinative of the remaining issue urged upon us in this proceeding.

1. The petitioners first contend that the registration provisions violate the Due Process Clause "because they exact admissions which serve no governmental purpose." The Supreme Court, in the 1961 case, held that the Government had a legitimate interest in discovering and disclosing the identity of members of the Communist Party. [fol. 72] That conclusion obtains here as well. Section 8 operates only if the Party has not yet registered under Sec-

termination of the status of the Communist Party binding upon petitioners in a criminal prosecution for non-compliance with the Board's orders. This is, obviously, a question of statutory construction, with constitutional implications, to be raised and decided when, and if, a criminal trial occurs.

The second derives from the challenge made to the grant of authority, in Section 8(c) of the Act, to the Attorney General to formulate, by regulation, the information to be supplied as an incident to registration. This authority is said to be so broad in scope and so lacking in standards for its exercise as to encounter sundry insurmountable constitutional obstacles. There is no showing that the regulations which the Attorney General has promulgated exceed the bounds of Congress' likely intentions. Compare the provisions of § 7(d) of the Act (prescribing the information to be contained in registration statements filed by Communist-action and Communist-front organizations). Until there is such a showing, the propriety of the Attorney General's actions and the conditions under which Congress has permitted him to act can best be inquired into judicially in a specific criminal prosecution, if any is ever initiated—a setting of greater factual concreteness.

tion 7. It is, thus, an alternative method of achieving the Government's aim. Petitioners attempt to distinguish Section 8 from Section 7 on the ground that, since an administrative finding of the individual's membership is a prerequisite to the orders issuing under Section 13(g)(2), the registration requirement serves no additional disclosure function. The short answer is that, in the absence of more comprehensive interpretation of the Act, particularly regarding the sanctions, we do not know whether an additional function is performed.

We are dealing with an unusual statute. Congress conceived the Subversive Activities Control Act as a comprehensive regulatory scheme, comprising Board proceedings leading to registration orders, restrictions imposed on all those who were the subjects of registration orders, and penalties levied on those who disobeyed the orders. The Supreme Court, in the 1961 opinion, refused to consider the legal consequences arising out of the sanctioning provisions, but affirmed the issuance of registration orders as a means reasonably related to the achievement of a goal within the general area of Congress' competence to legislate. Since the order here appears to be reasonably related to Congress' general objective, and, since there has been no determination that that goal or the means of achieving it employed in this Act are invalid on other constitutional grounds, we cannot now entertain constitutional objection on grounds that there is no independent governmental purpose.

2. Petitioners contend next that the registration provisions violate the First Amendment "because they extort declarations contrary to belief and conscience." This is, in essence, an argument that freedom of speech embraces a right not to identify oneself publicly with a political organization, since any such identification inevitably involves [fol. 73] attribution to the individual of what either are, or are asserted to be, the political ideals and objectives of the organization. We believe, however, that the 1961 opinion of the Supreme Court settled this question by

holding that the menace of the communist conspiracy, as found to exist by the Congress, justified such invasions of private rights. As pointed out in that case, registration requirements are not a new approach to the Government's problem of getting information and, in some cases, making it public. The courts have upheld this general approach, subject, of course, to the scrutiny in each case of the private right in relation to the governmental purpose. See *United States v. Harriss*, 347 U.S. 612 (1954) (upholding the Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261-270); *Burroughs v. United States*, 290 U.S. 534 (1934) (upholding the Federal Corrupt Practices Act, 2 U.S.C. §§ 241-245); *American Communications Assn. v. Douds*, 339 U.S. 382 (1950) (upholding the oath requirements of the Taft-Hartley Act); *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928); cf. The Foreign Agents Registration Act, 22 U.S.C. §§ 611-621. Compare *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958) and *Thomas v. Collins*, 323 U.S. 516 (1945).

3. Petitioners further contend that the registration provisions violate the First Amendment and the Due Process Clause "because they impose unjustifiable restraint on association." That part of the question which is before us now, whether the registration provisions alone place forbidden pressures on the freedom of association, has been answered by the Supreme Court in the negative.⁷

⁷ If the petitioners seek to pose the question "Whether Congress has power to outlaw an association, group or party either on the ground that it advocates a policy of violent overthrow of the existing Government at some time in the future or on the ground that it is ideologically subservient to some foreign country," (taken from Justice Black's 1961 dissenting opinion, 367 U.S. at 147) the question is premature, as the 1961 majority opinion makes plain. For, according to that opinion, in the absence of any consideration of the sanctions attaching to a registration order, the statute does not "outlaw an association, group or party" (emphasis added); it is simply a regulatory statute. Thus the majority opinion did not consider the question posed, and we may not consider it until such time as the Act's sanctions are before us.

[fol. 74] 4. Finally, it is suggested that the provisions constitute a bill of attainder "because the 1953 determinations as to the character of the Communist Party is made conclusive against petitioners." In the absence of any showing that circumstances have changed significantly since the Board's determination of the Party's status in 1953, we do not find it necessary to reexamine this issue here. See *National Council of American-Soviet Friendship, Inc. v. SACB*, — U.S.App.D.C. —, 322 F.2d 375, 392 (1963); *Weinstock v. SACB*, — U.S.App. D.C. —, — F.2d — (No. 13,422, decided Dec. 17, 1963) (concurring opinion); *Flynn v. Rusk*, 219 F. Supp. 709, 713 (D.D.C. 1963) (cert. granted); cf. *Communist Party v. SACB*, 367 U.S. at pp. 82-88; *Jefferson School of Social Science v. SACB*, — U.S.App.D.C. —, — F.2d — (No. 12,876, decided Dec. 17, 1963). Also see, footnote 6, *supra*.

The orders of the Board in these cases are

Affirmed.

Bastian, *Circuit Judge*, concurs in the result.

[fol. 75]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,492

WILLIAM ALBERTSON, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

No. 17,623

ROSCOE QUINCY PROCTOR, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petitions for Review of Orders of the Subversive Activities Control Board.

Before: Bazelon, Chief Judge, and Bastian and McGowan, Circuit Judges.

JUDGMENT—April 23, 1964

These cases came on to be heard on the records from the Subversive Activities Control Board, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the orders of the Subversive Activities Control Board on review in these cases are hereby affirmed.

Per Circuit Judge McGowan.

Circuit Judge Bastian concurs in the result.

[File endorsement omitted]

[fol. 78] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 79]

SUPREME COURT OF THE UNITED STATES

No. 265, October Term, 1964

WILLIAM ALBERTSON, et al., Petitioners,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ORDER ALLOWING CERTIORARI—May 17, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice White took no part in the consideration or decision of this petition.